



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Maschoff, Barr & Associates

File: B-228490

Date: January 26, 1988

DIGEST

1. Proposal which offered only one full-time counselor in response to RFP which indicated that four full-time counselors were required was reasonably determined to be technically unacceptable.
2. Failure of technical review committee to recommend that proposal be found technically unacceptable does not preclude source selection official from so determining since source selection official is not bound by recommendation of technical evaluators.
3. Proposed lower cost of technically unacceptable proposal is not relevant since the proposal is ineligible for award.

DECISION

Maschoff, Barr & Associates (MBA) protests the award of a contract by the Department of Health and Human Services (HHS) to Joseph Osoro Consultant Associates (Osoro) to provide employee counseling services for HHS employees in Region VIII, under request for proposals (RFP) No. 180-87-R-0001. MBA contends that its proposal received a higher technical score than Osoro's and offered a lower proposed cost and, therefore, it should have received the award.

We find the protest without merit.

The RFP provided for award of a 1 year cost-plus-a-fixed-fee contract, with 2 option years. Offerors were required to submit separate technical and business proposals, with cost references included only in the business proposal. The RFP provided that technical factors were twice as important as cost. The technical evaluation criteria weighted technical approach and personnel qualifications at 40 points each, and methodology of providing supervisory training at 20 points. The RFP also advised offerors that award might be made on the basis of initial proposals without discussions.

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By the July 31, 1987, initial closing date, HHS received six proposals, including MBA's and Osoro's. A technical review committee reviewed and evaluated the six technical proposals and assigned technical scores ranging from 18.0 to 87.3. The committee recommended that the two lowest scored proposals be found technically unacceptable. Osoro's proposal received a technical score of 68.67 and MBA's proposal received a score of 71.0. A cost evaluation was performed for the four highest rated offerors' base year cost proposals. Osoro's base year cost proposal was \$144,716. MBA's base year cost proposal was \$98,525, but the committee determined that MBA's proposal did not include costs for required health promotion activities and for outreach counseling, which the committee estimated would add approximately \$64,333 to MBA's proposal costs. Using an adjusted total cost of \$162,858 for MBA, MBA received a weighted total technical and cost score of 77.81, and Osoro received a total score of 80.37.

On August 24, the contracting officer, who was the source selection official (SSO), reviewed the proposals and the committee's recommendations. The SSO concluded that MBA's technical proposal was technically unacceptable because it failed to meet the staffing requirements of the RFP. In particular, he determined that MBA was proposing only one full-time counselor, while the RFP required four full-time counselors. The SSO further determined that Parkside Medical Services Corp., the incumbent contractor, whose proposal had received the highest technical score from the evaluation committee, was also technically unacceptable because of its insistence on using an outreach counseling approach which was specifically proscribed by the RFP. The SSO determined that Osoro's proposal, which was the lower cost of the two technically acceptable proposals, was most advantageous to the government. Award was made to Osoro on the basis of initial proposals on August 18, and MBA received a debriefing on August 28.

MBA protested to HHS on August 31, alleging that it had submitted a higher technically rated, lower cost proposal than had the awardee. By letter dated September 28, HHS indicated that it had misinterpreted MBA's cost proposal because of the paucity of cost data which MBA had provided in its business proposal. However, HHS denied MBA's protest on the basis that cost was not germane because MBA's proposal was technically unacceptable for failure to comply with the RFP's staffing requirement. Thereupon, MBA protested to our Office.

In essence, MBA contends that since the technical review committee did not reject its proposal, it is entitled to award because HHS now concedes that MBA had a lower proposed

cost than Osoro, and MBA's proposal was assigned a higher technical score by the committee. However, it is well settled that the SSO is not bound by the scoring or recommendation of the technical evaluators. Wormald Fire Systems, B-224514, Feb. 20, 1987, 87-1 CPD ¶ 189; Lee J. Kriegsfeld, B-222865, Aug. 22, 1986, 86-2 CPD ¶ 214. Accordingly, as long as he had a reasonable basis, the SSO was entitled to determine that MBA's proposal was technically unacceptable, notwithstanding the technical review committee's recommendation.

As a general rule, our Office will defer to the agency SSO's judgments. COMSAT International Communications, Inc., B-223953, Nov. 7, 1986, 86-2 CPD ¶ 532. The selection decision and the manner in which the SSO uses the results of the technical and price evaluations is governed by the tests of rationality and consistency with established evaluation factors. Id. The evaluation of proposals is the function of the procuring agency, requiring the exercise of discretion and informed judgment. We do not conduct a de novo review of proposals or make an independent determination of their acceptability or relative merit. Corporate Health Examiners, Inc., B-220399.2, June 16, 1986, 86-1 CPD ¶ 552. We will question contracting officials' determinations only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. COMSAT, B-223953, supra.

Here, the SSO determined that MBA's proposal was technically unacceptable because it offered only one full-time counselor, while the RFP required four full-time counselors. MBA contends that the RFP did not require any specific number of full-time counselors. MBA also argues that while it specifically offered to provide only one full-time counselor, its proposal also indicated that MBA has available approximately 200 professional people which it would utilize as a team, "rather than hiring two or three full-time people to provide the service." MBA contends that this approach was adequate to provide the services required. In addition, MBA points out that besides offering one full-time on-site counselor for the Denver area, it indicated that additional community support staff would be brought on site when needed. MBA contends that, in any event, the RFP permitted the submission of alternate staffing proposals.

The RFP does not explicitly state that four full-time counselors are required. However, it does require that offerors base their cost proposals on a total HHS employee population of 14,000. Further, the RFP contains four references to staffing requirements which articulate a staffing ratio of one full-time counselor per 3,500 HHS employees. The most specific requirement in this regard

provides that: "Based on the common estimate of one full-time ECSP counselor for each 3,500 employees, the contractor is expected to provide adequate staff for this program." We find that the SSO reasonably construed these RFP provisions as establishing a requirement for the submission of a proposal which included four full-time counselors.

To the extent that MBA contends that its general indication that it would meet staffing needs satisfied this requirement, even though MBA's proposal specified only one full-time counselor, we have held that such a blanket offer of compliance is not an adequate substitute for detailed information in a proposal which establishes that what is proposed will meet the stated needs. Department of the Air Force--Request for Reconsideration of Protest filed by Motorola, Inc., B-222181.2, Nov. 10, 1986, 86-2 CPD ¶ 542.

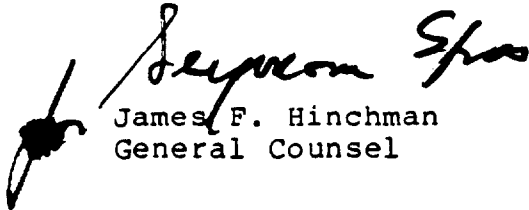
MBA also argues that the RFP explicitly permitted the submission of alternate staffing proposals. However, the RFP states that alternate proposals are permissible, "provided, that [the offeror] also submits a proposal for performance of the work as specified in the statement of work." The plain import of this language is that while an alternate staffing plan may be submitted, it will only be considered if it is provided in addition to a staffing plan conforming to the RFP requirements. The RFP does not permit the submission of such an alternate staffing plan by itself, in lieu of a conforming proposal. Accordingly, HHS was not obligated to consider MBA's alternate, nonconforming staffing plan.

MBA's argument that it should have been permitted to submit a best and final offer, and should have been awarded the contract on the basis of its lowest proposed cost, notwithstanding its proposal's staffing deficiency, is without merit. It is well established that where a proposal is properly rejected as technically unacceptable, the cost proposed by the offeror is irrelevant as the proposal is ineligible for award. Pacific Computer Corp., B-224518.2, Mar. 17, 1987, 87-1 CPD ¶ 292.

MBA also protests that the RFP was vague and confusing with respect to the exact locations at which the offerors were expected to provide counselors. However, this constitutes an alleged apparent solicitation impropriety which, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1987), must be protested prior to the closing date for the receipt of initial proposals. MBA's initial protest was not filed until after award was made, and is therefore untimely in this respect.

Finally, MBA complains that HHS provided Osoro with a copy of MBA's protest. However, under our Bid Protest Regulations, Osoro, the awardee, is clearly an interested party to whom the contracting agency is required to furnish a copy of the protest submissions. 4 C.F.R. § 21.3(a).

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel